HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.26762 of 1999

Dated 13th day of April, 2007

Between:

Madakam Bakkulu .. Petitioner

And

The Joint Collector,
Khammam District, Khammam
and two others .. Respondents

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O R D E R:

This writ petition is filed seeking a mandamus to declare the Proceedings dated 8.11.1998 issued by the 1st respondent, as arbitrary and illegal, and consequently set aside the same.

The facts of the case in brief are that the Government issued a patta in R.C.No.C1/1526/88, dated 12.7.1988 in favour of the petitioner for agricultural land of an extent of Ac.3.00 in R.S.No.440 situated in Lakshmipuram village, Burgumpahad Mandal, Khammam District and the 2nd respondent-Mandal Revenue Officer, after conducting panchanam on 13.7.1988, handed over possession to him and since then the petitioner has been in peaceful possession and enjoyment of it. The 3rd respondent-third party challenged the panchanama in W.P.No.15446 of 1990 on the ground that she was in possession of the land of an extent of Ac.2.20 guntas out of Ac.3.00 guntas, but it was dismissed on 6.7.1992. Against the order of dismissal, when the 3rd respondent preferred W.A.No.895 of 1992 this Court disposed of it on 1.2.1997 directing the parties to establish their rights. In pursuance of this judgment, the 2nd respondent, by conducting panchanama evicted the 3rd respondent, who high-handedly occupied the land, and handed over the possession to the petitioner. The 3rd respondent again filed W.P.No.21492 of 1998 and the same was disposed of on 3.8.1998 with a direction to the 2nd respondent not to interfere with the possession of the 3rd respondent if the property is proved to be her property. Now, the petitioner's grievance is that when the 3rd respondent, without there being any order from the lower authorities to

be challenged, filed an appeal before the 1st respondent-Joint Collector along with an application for grant of interim injunction, the 1st respondent passed an *ex parte* order on 8.11.1998 directing the 2nd respondent to give protection to the crop and maintain *status quo* till disposal of the appeal.

A detailed counter affidavit is filed on behalf of the 2nd respondent wherein all the facts are admitted, but the only contention raised in the counter affidavit is that when the appeal is pending and the petitioner entered appearance he should have brought these facts to the notice of the 1st respondent-Joint Collector i.e. the appellate authority instead of approaching this Court and filing the present writ petition.

Heard the learned counsel for both the parties.

The eviction order passed by the 2nd respondent-Mandal Revenue Officer under Section 6 of the A.P. Land Encroachment Act, 1905 (for short "the Act") on 19.12.1997 was served on the 3rd respondent on 27.12.1997 and possession was delivered to the petitioner under cover of panchanama with police aid. Questioning this order, the 3rd respondent filed W.P.No.21492 of 1998 along with an application seeking interim injunction, and this Court, passed telegraphic order directing the authorities not to interfere with the possession if the property in question is proved to be the property belonging to the 3rd respondent herein without passing any order under law. In my considered view, the 3rd respondent, having filed the writ petition and obtained the telegraphic order, should not have approached the appellate authority i.e. the 1st respondent-Joint Collector under Section 10 of the Act and preferred the appeal. In fact, against the order passed by the 2nd respondent- Mandal Revenue Officer under Section 6 of the Act, a regular appeal is provided under

law, but the 3rd respondent, without exhausting the remedy of appeal, filed W.P.No.21492 of 1998, which was disposed of on 3.8.1998. Of course, the 1st respondent-Joint Collector does not have knowledge about W.P.No.21492 of 1998 and hence he entertained the appeal. Therefore, I can direct the petitioner to approach the authority and bring the factum of the writ petition and the order dated 3.8.1998 to his notice, but having regard to the fact that the facts stated by the petitioner are admitted and the petitioner happens to be the legal owner of the land in question, this Court is not inclined to do so.

In the result, this writ petition is allowed and the Proceedings in R.C.No.B4-9247/98, dated 8.11.1998 issued by the 1st respondent are set aside holding that the same are without jurisdiction. It is made clear that the order dated 3.8.1998 passed in W.P.No.21492 of 1998 directing the 3rd respondent to establish her possession and title is not disturbed. No costs.

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13.04.2007

bcj